

**TESTIMONY OF MICHAEL W. CUTLER
FOR THE HEARING TO BE HELD ON
MAY 11, 2006
BEFORE THE HOUSE COMMITTEE ON INTERNATIONAL
RELATIONS, SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS**

“VISA OVERSTAYS; CAN WE BAR THE TERRORIST DOOR?”

Chairman Rohrbacher, ranking member Delahunt, members of Congress, ladies and gentlemen, I greatly appreciate the opportunity to testify before this subcommittee on an issue that I believe is of great significance to the security of our nation, especially as we attempt to secure our country against criminals and terrorists.

Much attention has been paid to the porous borders of the United States through which large numbers of aliens succeed in entering our country illegally. However the issue of aliens who enter our country through ports of entry having been inspected by CBP, who subsequently overstay or otherwise violate the terms of admission, is an issue that is often neglected if not totally overlooked. That is why this hearing is of special significance. In order for a terrorist to attack our nation from within our borders he must first, obviously, manage to enter the United States. Whether it is by running our borders, stowing away on a vessel or entering the United States through a port of entry, terrorists have many ways of gaining entry into the United States and the issue of visa violators is of critical concern and represents a major vulnerability.

It is worth noting that the terrorists who attacked our nation on September 11, 2001 all entered our country through ports of entry. I have often made the point that any state that possesses an international airport or a seaport is, in fact, a border state. It is currently estimated that more than 40% of the illegal alien population currently present in the United States did not run our nation's borders, but entered our country through a port of entry and then, in one way or another, violated the terms of their admission into the United States, whether by overstaying the authorized period for which they were admitted, accepting unauthorized employment or became

involved in criminal activities and were found guilty of committing crimes within the United States.

While this hearing is focused on visa overstays, we need to also consider the Visa Waiver Program that enables aliens from 26 countries plus Canada to apply for admission to the United States without first obtaining a visa for the United States. At present, most American citizens are required to remove their shoes so that these items can be searched, before passengers are permitted to board an airliner. This procedure is followed because Richard, Reid, the infamous "Shoe Bomber" concealed a bomb in his shoes. Mr. Reid, however, was a citizen of Great Britain and was eligible to seek entry into the United States without first applying for and receiving a visa. So, while citizens of our nation fall under greater scrutiny to enhance security on airplanes, aliens may still seek admission into the United States without first securing a visa. The visa requirement for aliens seeking to enter the United States provides three potential benefits to our law enforcement authorities. First of all, the process of securing a visa requires an interview that helps to screen out those aliens who should not be permitted to enter the United States for a variety of reasons. Second, the application that an alien files in pursuing a visa can provide useful information should that alien ultimately become the target or potential target of an investigation for a wide variety of crimes including of course, terrorism. Finally, if an alien lies on that application and commits visa fraud, it can often be easier to prosecute an alien for committing visa fraud than for his involvement in terrorism or other such criminal activities. Significantly, the penalties for visa fraud, committed in furtherance of drug trafficking increases the penalties for such fraud when that nexus can be established, to a maximum of 20 years of incarceration and the maximum penalty increases to 25 years of incarceration when such fraud is committed in conjunction with terrorism. An alien who seeks to enter the United States under the auspices of the Visa Waiver Program faces none of these provisions of laws and none of these potential investigative or law enforcement tools can be applied in such cases.

The President of the United States and other political leaders have often said that we should focus law enforcement's resources and attention on those who would do us harm and not waste the extremely limited resources of ICE to enforce the

immigration laws from within the interior of the United States on those who simply come to the United States to seek employment. It would indeed make sense to do this if it were such a simple proposition. Someone once said that an effective spy is someone who would not attract the attention of a waitress at a "Greasy spoon diner." The same can be said of an effective terrorist. In fact, it might well be that the waitress or waiter of such an establishment is, in fact, a spy or a terrorist.

In the mid 1980s, as a special agent of the former INS, I was assigned to conduct an investigation of a diner in Staten Island, New York. We had received information that a number of illegal aliens were working at that restaurant who had come from a variety of countries. We ultimately arrested a number of employees, most of whom worked in the kitchen of the diner. One of the employees, a dishwasher, was a citizen of Egypt who realized what was going on fled out the back door of the restaurant and it took a bit of a chase to finally arrest him. Once in custody, we took him back to his apartment to attempt to obtain his passport, a standard procedure, since that travel document would be essential if we were to have him deported. He was cooperative and in we entered his apartment. My partner and I were at a loss to understand why we found many shopping bags from department stores filled to the brim with coupons for various grocery items ranging from laundry detergent to diapers and dog food. When questioned about it, he fumbled for an answer and then said that the kids in the neighborhood played with the coupons. We knew it made no sense, but having nothing else to go on, we simply retrieved his passport and lodged him in the immigration detention facility. He was ultimately deported.

Several months later, I watched a televised news program and to my consternation and frustration, learned that the PLO had been sending their minions to the United States to raise money for terrorist activities by committing a variety of crimes including coupon fraud. Apparently the dishwasher was one of those who had come here to raise money to fund terrorism.

There have been published accounts in newspapers of terror suspects who have worked at a wide variety of seemingly menial jobs in the United including one guy who drove an ice-cream truck and others who have driven taxi cabs while still others have worked in used car lots or even taught school. I

can tell you from personal experience having spent years conducting surveillance in conjunction with conducting various criminal investigations into a wide variety of criminal activities that when a bad guy gets in his or her car and drives to a location where he gets out of his vehicle and meets with another individual, that it is easy presume a meeting has taken place and we could follow the other participant in that meeting to further the investigation. In the case of the terror suspect who drove an ice-cream truck, think about how many people may approach that truck on a warm afternoon seeking to buy ice-cream. How could you tell if any of them were actually associates of the driver of that truck who were there to meet with him in a very effective clandestine manner? How many meetings could a terrorist have with his "passengers" in his taxi cab that would evade detection by a surveillance team? Furthermore, ice-cream trucks and taxi cabs are truly ubiquitous. They can be used for surveillance by terrorists because they blend in so well with the urban landscape. These menial jobs can help terrorists to hide in plain sight.

Yet, the administration talks about targeting sensitive locations such as airports and nuclear power plants and military bases to look for illegal aliens. Certainly these locations should come under intense scrutiny because of their obvious potential as targets for terrorists, but by focusing on these locations we are, in effect, providing a play book to our adversaries. The message is clear, if you want to embed yourself in our country and not arouse the attention of law enforcement, especially ICE, do not get a job in a nuclear power plant but sell hot dogs outside that power plant and no one will bother you or even pay attention to you.

It is critical that the enforcement of the immigration laws possess at least a modicum of unpredictability to create a situation wherein terrorists or other criminals never know if they may be arrested for violating our immigration laws. Additionally, the arrest of aliens for immigration law violations often helps in the cultivation of informants. However, in order for this to work, we need many more special agents assigned to ICE to conduct these field investigations and we need adequate detention space to make certain that once arrested, illegal aliens are actually removed from the United States.

In order to accomplish these goals, it will be necessary for ICE to have many more special agents who are provided with more resources, but especially as we wage a war against terrorism, drugs and violent gangs, to not do this represents a false economy. Consider that New York is the safest big city in the United States. It has more than 8 million residents who are confined to the relatively small area that makes up the five boroughs of the city of New York, but it is policed by roughly 37,000 police officers. It has been estimated that there are about twice as many illegal aliens present in the United States as there are residents living in the city of New York and these aliens are scattered throughout our nation. Yet there are fewer than 3,000 special agents of ICE who are dedicated to enforcing the immigration laws for the entire country. What this means is that if an alien succeeds in running our nation's borders or succeeds in entering the United States through the inspection process and then overstays his/her authorized period of admission, the odds of that alien being arrested by ICE are between slim and none.

US VISIT is being implemented at ports of entry throughout the country although that process is not completed, it is designed to keep track of nonimmigrant alien visitors who fail to depart the United States before their authorized stay in the our country expires. This is certainly a worthwhile capability, the only question is, who will be able to search for aliens who fail to depart when they are supposed to? I am concerned that in this version of "Hide and Seek" the aliens, including terrorists may well hide with little concern that anyone from ICE will seek.

I look forward to your questions.